

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: [REDACTED]	Team: Team # 2	CCRB Case #: 201213751	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sat, 10/20/2012 12:30 PM	Location of Incident: Bronxwood Avenue and East 229th Street and the 47th Precinct Stationhouse		Precinct: 47	S.O.L. Expires: 04/20/2014	
Date/Time CV Reported Sat, 10/20/2012 1:22 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 10/20/2012 1:22 PM		

Complainant/Victim	Type	Home Address
1. [REDACTED]	Comp/Victim	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Nunez	18750	[REDACTED]	047 PCT
[REDACTED]			[REDACTED]
[REDACTED]			[REDACTED]

Witness Officer(s)	Shield No	Tax No	Cmd Name
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
A . POM Daniel Nunez	Abuse of Authority: PO Daniel Nunez stopped [REDACTED] at Bronxwood Avenue and East 229th Street.	A . Substantiated
B . POM Daniel Nunez	Abuse of Authority: PO Daniel Nunez searched [REDACTED] at Bronxwood Avenue and East 229th Street.	B . Unsubstantiated
C . POM Daniel Nunez	Abuse of Authority: PO Daniel Nunez frisked [REDACTED] at Bronxwood Avenue and East 229th Street.	C . Substantiated
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
F . POM Daniel Nunez	Other: PO Daniel Nunez failed to prepare a stop and frisk report as required.	F . Other Misconduct
G . POM Daniel Nunez	Other: PO Daniel Nunez failed to prepare a memo book entry as required.	G . Other Misconduct

Case Summary

On October 20, 2012, [REDACTED] filed a complaint through the CCRB's Call Processing System (encl. 3A).

On October 20, 2012 around 12:30 p.m., Mr. [REDACTED] was approached by plainclothes officers on Bronxwood Avenue in Brooklyn while walking home. The following allegations resulted:

- **Allegation A: Abuse of Authority –PO Daniel Nunez stopped [REDACTED] at Bronxwood Avenue and 229th Street in the Bronx.**
The investigation determined that PO Nunez stopped Mr. [REDACTED] without justification. It is therefore recommended **Allegation A** be *substantiated*.
- **Allegation B: Abuse of Authority – PO Daniel Nunez searched [REDACTED] at Bronxwood Avenue and 229th Street in the Bronx.**
The investigation could not determine by a preponderance of evidence whether PO Nunez searched Mr. [REDACTED] so it is recommended **Allegation B** be *unsubstantiated*.
- **Allegation C: Abuse of Authority –PO Daniel Nunez frisked [REDACTED] at Bronxwood Avenue and 229th Street in the Bronx.**
The investigation determined that PO Nunez frisked Mr. [REDACTED] without reasonable suspicion. It is therefore recommended **Allegation C** be *substantiated*.
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- **Allegation F: Other –PO Daniel Nunez failed to prepare a stop and frisk report as required.**
PO Nunez did not prepare a stop and frisk report as required by Patrol Guide Section 212-11, and therefore it is recommended he be cited for *other misconduct* for **Allegation F**.
- **Allegation G: Other –PO Daniel Nunez failed to prepare a memo book entry as required.**
PO Nunez acknowledged stopping and frisking Mr. [REDACTED] but had no memo book entries regarding the interaction. It is therefore recommended that *other misconduct* be noted for **Allegation G**.

Results of Investigation

Civilian Statements

Complainant/Victim: [REDACTED]

- [REDACTED]

CCRB Statement

██████████ provided a phone statement on October 24, 2012 (encl. 4A) and was interviewed over the phone on January 22, 2013 (encl. 4B-4D). Mr. ██████████ was unable to come to the CCRB because he cares for both of his parents who are stroke victims. He returned a notarized statement, but did not provide a copy of his identification and did not provide a completed confidential witness information sheet. Mr. ██████████ answered follow up questions on February 12, 2013 (encl. 4E). All statements were consistent and have been combined into the following statement.

On October 20, 2012 around 12:30 p.m. Mr. ██████████ was walking home. It was somewhat chilly on this day. Mr. ██████████ was wearing a ██████████ t-shirt, a black nylon vest that was slightly puffy and blue jeans. His hands were in his vest pockets before he saw the officers.

He walked past a black, four-door Crown Victoria, or a similar model on Bronxwood Avenue, that was stopped at a red light and as he did the light turned green. Mr. ██████████ crossed the street and immediately, the car followed him to the corner.

While still on Bronxwood Avenue, the driver, PO1, identified by the investigation as PO Daniel Nunez, told Mr. ██████████ to put his hands up. At first, Mr. ██████████ did not comply and kept walking. Mr. ██████████ refused and said that he was not doing anything wrong. The four officers in the car came out of the car and surrounded Mr. ██████████. Mr. ██████████ still did not put his hands up, but felt intimidated because there was one officer on each side of him, so he then put his hands up. He was pushed against the fence. PO2 (██████████ ██████████ ██████████) and PO3 (██████████ ██████████ ██████████) held onto Mr. ██████████ elbows to keep his hands up. PO Nunez stood directly in front of Mr. ██████████ and PO4 (██████████ ██████████) stood in front of Mr. ██████████ slightly to the right and was 3-4 feet away from him. PO4 mostly stood back and was an observer. PO2, PO3, and PO4 remain unidentified.

Mr. ██████████ asked why he was being stopped, what was going on and what was the problem. PO Nunez said that it was because Mr. ██████████ hands were in his vest pocket. PO Nunez first went into Mr. ██████████ front and back pants pockets. Mr. ██████████ had his wallet in his left front pocket and money in his right front pocket. PO Nunez took Mr. ██████████ wallet out of his pocket and opened it. He took out Mr. ██████████ ID. He then frisked Mr. ██████████ vest pocket and his waist, but there was nothing in the vest pocket.

PO Nunez took Mr. ██████████ ID back to the vehicle. When he returned, he said things like “I knew something was going to be up with you. I could just tell by the way you were walking.” Mr. ██████████ does have a record and has been to jail, but there are currently no warrants for him or charges against him. Mr. ██████████ responded with some smart remarks, but did not specify what he said exactly. He was not issued a summons and was not arrested.

He asked to see the officers’ badges, intending to obtain their names and shield numbers, and said “There’s no need to hide.” PO2 and PO3 were standing directly next to him, so Mr. ██████████ could not see their badges. PO Nunez moved his badge to the side when Mr. ██████████ asked so that Mr. ██████████ could not read the entire badge. Mr. ██████████ said he did have the badge number at some point and provided it in his initial phone statement. They walked to the car and had their backs to Mr. ██████████. PO Nunez returned his wallet, and the four officers quickly left. Mr. ██████████ told them he was going to complain.

Mr. [REDACTED] went to the 47th Precinct stationhouse immediately after the incident. He was told there that he could not file a complaint and was directed to a poster for the CCRB. He dealt with PO5, who was a [REDACTED].

Attempts to contact civilian

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

NYPD Statements:

Subject Officer: PO DANIEL NUNEZ

- [REDACTED]
[REDACTED]
- *On October 20, 2012, PO Nunez worked from 9:30 a.m. until 6:05 p.m. He was assigned to anti-crime and was in an unmarked vehicle with PO [REDACTED] and Sgt. [REDACTED]. They were all in plainclothes.*

Memo book

PO Nunez had no memo book entries regarding this incident (encl. 5A-5C).

CCRB Statement

PO Nunez was interviewed at the CCRB on March 9, 2013 (encl. 5E-5G).

On October 20, 2012, PO Nunez was driving an unmarked vehicle with PO [REDACTED] and Sgt. [REDACTED]. PO Nunez saw Mr. [REDACTED] walking near East 229th Street and Bronxwood Avenue. That day, it was about 60 degrees and Mr. [REDACTED] was wearing a hoodie and a heavy bubble down vest. This heavy clothing stood out to PO Nunez. It was the middle of the afternoon and most people were at work or school. He had one hand in a pocket and PO Nunez thought that he may be holding onto a weapon.

Due to these factors, PO Nunez decided to stop Mr. [REDACTED]. He did not discuss it with PO [REDACTED] or Sgt. [REDACTED]. PO Nunez, PO [REDACTED] and Sgt. [REDACTED] all exited the vehicle and approached Mr. [REDACTED]. PO Nunez identified himself as an officer and asked how Mr. [REDACTED] was and what he was doing. Mr. [REDACTED] immediately started yelling why he was being harassed. Mr. [REDACTED] did not try to run away from the officers but did take a step away from them. PO Nunez said that he immediately knew that there was something wrong with Mr. [REDACTED] and that he may have been an EDP because PO Nunez did not consider Mr. [REDACTED] reaction to be average.

PO Nunez asked Mr. [REDACTED] to take his hands out of his pockets about three times and Mr. [REDACTED] refused, causing PO Nunez to feel that it was necessary to frisk him. PO Nunez frisked Mr. [REDACTED] but did not feel anything that could have been a weapon. Throughout the frisk, Mr. [REDACTED] said "This is bullshit" and "You're fucking harassing me." He did not put his hands in any of Mr. [REDACTED] pockets. PO [REDACTED] and Sgt. [REDACTED] did not aid in the frisk of Mr. [REDACTED].

PO Nunez requested Mr. [REDACTED] ID and Mr. [REDACTED] provided it. PO Nunez did not reach into his pocket to obtain the ID. PO Nunez explained that he stopped Mr. [REDACTED] because of Mr. [REDACTED].

█████ unseasonable clothing and that people sometimes wear extra clothing to conceal weapons. PO Nunez said that there was a school nearby and that they were trying to keep weapons away from the school. Mr. █████ said “Fuck the police. This is harassment. You can’t touch me and you can’t talk to me.”

Mr. █████ requested names and shield numbers from all three officers. PO Nunez provided whatever Mr. █████ requested. PO Nunez was not sure if PO █████ or Sgt. █████ provided his name and shield number to Mr. █████ but said that their shields were prominently displayed.

PO Nunez, PO █████ and Sgt. █████ were the only officers present. PO █████ and Sgt. █████ did not speak to Mr. █████ and did not touch Mr. █████ Mr. █████ was never pushed against a wall or a fence.

Witness Officer: PO █████

- █████
█████
- █ █████
█████
█████ █████
█████

Memo Book

█████
█████ █████
█████ █████
█████

CCRB Statement

█████

█████
█████
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█████
█████
█████

Officers not interviewed

█████
█████
█████ █████
█████
█████
█████
█████

NYPD Document

47th Precinct Roll Call: October 20, 2012, Tour 2

[REDACTED]

Documents not obtained

[REDACTED]

Status of Civil Proceedings

- [REDACTED]

Civilian Criminal History

- [REDACTED]
 - [REDACTED]
 - [REDACTED]

Civilian CCRB History

- [REDACTED]

Subject Officer CCRB History

- PO Daniel Nunez has been a member of the service for seven years and there are two substantiated CCRB allegations against him and one other misconduct noted (encl. 2A).
 - In case #200610674, the Board recommended charges for a question and/or stop and a search. PO Nunez pled guilty and was penalized two vacation days for each allegation. Also in that case, other misconduct was noted for failure to produce a stop and frisk report.

Conclusion

Allegations not pled

[REDACTED]

Identification of Subject Officers

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Investigative Findings and Recommendations

Allegation A: Abuse of Authority –PO Daniel Nunez stopped [REDACTED] at Bronxwood Avenue and 229th Street in the Bronx.

It is undisputed that PO Nunez stopped Mr. [REDACTED] on October 20, 2012. It is in dispute whether it was justified.

PO Nunez stated that he decided to stop Mr. [REDACTED] upon seeing him walking near East 229th Street and Bronxwood Avenue because it was about 60 degrees out and Mr. [REDACTED] was wearing a hoodie and a heavy down vest, which stood out to PO Nunez considering the temperature. He also stated that he initiated the stop and did not discuss it with his partners because he was driving. It was also in the middle of the afternoon and most people were at work or at school. PO Nunez observed Mr. [REDACTED] with one hand in his pocket, and PO Nunez thought he may have been holding on to a fire weapon.

Mr. [REDACTED] confirmed that he had his hands in his vest pockets and that he was wearing a nylon vest, however he stated he was only wearing a [REDACTED] t-shirt under the vest.

According to wunderground.com, the temperature that day in New York City was between 57 °F and 72 °F.

Police may question someone if they have a founded suspicion that they are engaging in criminal activity, however, before police may stop a person, there must be a reasonable suspicion of criminality. People v. De Bour, 40 N.Y.2d 210 (1976) (encl. 1A-1K).

PO Nunez's reasons for stopping Mr. [REDACTED] provided him, at most, a reason to request information. By Mr. [REDACTED] and PO Nunez's statements, Mr. [REDACTED] was surrounded by at least three officers and then was pushed against a fence. He was not free to leave and was stopped, which requires a reasonable suspicion.

In addition, PO Nunez's stated reasons for approaching Mr. [REDACTED] are [REDACTED] by the facts. Neither the wardrobe described by PO Nunez, nor the one described by Mr. [REDACTED] is unseasonable based on the weather report. In addition, October 20, 2012 was a Saturday, and as such, most people were not at work or at school. Neither Mr. [REDACTED] wardrobe, the placement of his hands in his pockets, nor the time of day suggested that he was involved in any sort of criminal activity.

The investigation determined that the factors described by PO Nunez leading to the stop did not constitute a reasonable suspicion, and the stop was therefore unjust. It is recommended that **Allegation A** be *substantiated*.

Allegation B: Abuse of Authority – PO Daniel Nunez searched [REDACTED] at Bronxwood Avenue and 229th Street in the Bronx.

Mr. [REDACTED] alleged that prior to being frisked, PO Nunez entered Mr. [REDACTED] front and back pants pockets and that PO Nunez removed his wallet and opened it to obtain Mr. [REDACTED] ID. PO Nunez denied that Mr. [REDACTED] was ever searched.

There were no civilian witnesses and as discussed above, PO Nunez's partners were not identified. Absent additional information the investigation cannot determine whether or not PO Nunez searched Mr. [REDACTED]. It is therefore recommended that **Allegation B** be *unsubstantiated*.

Allegation C: Abuse of Authority –PO Daniel Nunez frisked [REDACTED] at Bronxwood Avenue and 229th Street in the Bronx.

It is undisputed that PO Nunez frisked Mr. [REDACTED] on October 20, 2012. The justification for the frisk is in question.

Mr. [REDACTED] stated that he was walking with his hands in his vest pockets before he was stopped. PO Nunez ordered him to put his hand up, and at first Mr. [REDACTED] did not comply and continued walking. PO Nunez ordered him to raise his hands again and Mr. [REDACTED] refused. The officers exited their vehicle and surrounded him. Mr. [REDACTED] felt intimidated and raised his arms. PO Nunez searched Mr. [REDACTED] but did not recover any weapons. He then patted Mr. [REDACTED] vest pocket and his waist. Mr. [REDACTED] did not have any items in his vest pockets.

PO Nunez acknowledged frisking Mr. [REDACTED] and stated that he did so because once Mr. [REDACTED] was stopped, he refused to remove his hands from his pockets after asking him about three times. PO Nunez thought he may be holding onto a weapon. PO Nunez also stated that Mr. [REDACTED] was stopped near a school and many of the students are robbed. In addition, the area has many firearms and there are many robberies.

An officer may conduct a frisk if he reasonably suspects that a person is armed and dangerous. Arizona v. Johnson 555U.S.323; 129 S. Ct. 781 (2009) (encl. 1W-1DD). When a person reinserts his hands into his pockets after repeated lawful requests to remove them, an officer may frisk that person. People v. Robinson, 718 N.Y.S.2d 524 (2000 4th Dept.) (encl. 1L-1M). Innocuous behavior in a high crime area does not justify police intrusion. People v. Hampton 200 A.D.2d 446 (1994 1st Dept.) (encl. 1N-1P).

PO Nunez provided no valid reasons that suggested Mr. [REDACTED] was armed. October 20, 2012 was a Saturday and the incident did not occur during school dismissal time. Therefore, there was no reason to believe Mr. [REDACTED] may have been robbing students. In this case, Mr. [REDACTED] never reinserted his hands in his pockets, so the fact that his hands were in his pockets prior to interacting with the officers does not justify the frisk and does not provide PO Nunez with reason to believe he was in danger. Mr. [REDACTED] actions were innocuous, so PO Nunez's statement that the area has many firearms and robberies cannot be considered as justification for a frisk.

The investigation determined that PO Nunez lacked the justification necessary to frisk Mr. [REDACTED]. It is therefore recommended **Allegation C** be *substantiated*.

[REDACTED]

[REDACTED]

Allegation F: Other –PO Daniel Nunez failed to prepare a stop and frisk report as required.

PO Nunez acknowledged stopping and frisking Mr. [REDACTED] on October 20, 2012. The digital Stop, Question and Frisk log only lists two reports prepared by the 47th Precinct. One was for [REDACTED] [REDACTED] and the other was for [REDACTED]. The handwritten report and log were requested from the precinct, but the request was returned with a note saying that the precinct was unable to locate the documents.

Patrol Guide Section 212-11 requires officers to prepare a Stop, Question, and Frisk report when there is not an arrest (encl. 1T-1V).

Because PO Nunez did not complete a Stop, Question and Frisk report for Mr. [REDACTED] as required, it is recommended that *other misconduct* be noted for **Allegation F**.

Allegation G: Other –PO Daniel Nunez failed to prepare a memo book entry as required.

During his CCRB interview on April 9, 2013, PO Nunez stated that he stopped and frisked Mr. [REDACTED] while working with PO [REDACTED] and Sgt. [REDACTED]. He noted that he worked with Sgt. [REDACTED] but had no entry regarding the interaction with Mr. [REDACTED]. That day, he only noted that he was present for duty and the end of his tour.

Patrol Guide Procedure 212-08 requires officers to prepare memo book entries about any actions taken (encl. 1Q-1S).

PO Nunez had no memo book entries regarding Mr. [REDACTED] but in the interview, he acknowledged stopping and frisking Mr. [REDACTED]. Because PO Nunez did not prepare an entry regarding Mr. [REDACTED] it is recommended that *other misconduct* be noted for **Allegation G**.

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date